

California Regional Water Quality Control board
Santa Ana Region

March 2, 2001

ITEM: 11

SUBJECT: Revised Mandatory Minimum Penalties Complaint No. 00-61 -Yucaipa
Valley Water District

BACKGROUND:

California Water Code Sections 13385(h) and (i) require mandatory minimum penalties of \$3,000 per violation for each serious or repetitive violation of NPDES effluent limitations, among other violations. These Water Code sections became effective January 1, 2001, as a result of the passage of SB 709, known as the "Migden Bill," after its principal sponsor, State Senator Carole Migden. Unlike administrative civil liability authorized by Water Code Section 13385(c) *et seq.*, and elsewhere in the Water Code, mandatory minimum penalties are not discretionary.

Yucaipa Valley Water District (YVWD) discharges tertiary treated effluent from its Wochholz Wastewater Treatment Plant to San Timoteo Creek, San Bernardino County. These discharges are regulated by waste discharge requirements Order No. 96-004, NPDES No. CA0105619, adopted by the Regional Board on April 18, 1996.

On July 18, 2000, the Executive Officer issued Mandatory Minimum Penalties Complaint No. 00-61 to YVWD for \$429,000, citing that between January and April 2000, YVWD reported a total of 146 effluent violations of its Coliform, Turbidity and Total Inorganic Nitrogen effluent limitations. The Complaint alleged that one hundred forty three of these violations were subject to mandatory penalties. The first three violations are not counted, in accordance with Section 13385 (i).

DISCUSSION:

On July 17, 2000, YVWD submitted a report asserting that the coliform and turbidity violations cited in Complaint No. 00-61 were the result of a single operational upset, and provided supporting documentation. Documentation included a detailed discussion, developed by YVWD staff and its engineering consultant, recounting the series of events and actions at the wastewater plant that followed a dramatic deterioration of plant performance in late December 1999. YVWD recalculated their compliance based on the premise of an upset, and concluded that they were liable for 43 violations and a mandatory penalty of \$129,000. Board staff rejected these arguments, because YVWD's claim of an upset did not meet legal requirements necessary to establish an affirmative "upset" defense.

On November 27, 2000, YVWD staff, and its consultants, met with Board staff and presented a revised defense of the coliform and turbidity violations cited in Complaint No. 00-61. This same information was submitted to Board staff in a January 25, 2001 report. After having reviewed its legal options and the circumstances of the violations, YVWD asserted that the coliform and turbidity violations that occurred from January 1, 2000, through March 29, 2000, were the result of an intentional act of a third party. Water Code Section 13385(j) states that, "Mandatory penalties shall not be assessed under this section if the violations are caused by one or any combination of the following:

- (3) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight."

In its January 25, 2001, report, YVWD presented factual information and expert opinions supporting the "intentional act of a third party" claim. YVWD, its consultants and outside experts believe extremely toxic and highly regulated pesticides¹ that were illegally discharged into its sewer system on December 26 or 27, 1999, by an unknown party, caused the violations. Treatment plant operating data confirm that beginning December 28, 1999, the trickling filter biological treatment performance deteriorated, and in cascading fashion, subsequent treatment systems were negatively affected, due to countermeasures to the toxic shock. This sequential deterioration resulted in the partial loss of the effectiveness of the filtration and disinfection processes.

Plant operators and YVWD's engineering and operational consultants responded to the failure of the plant processes timely, thoughtfully, aggressively and appropriately. An unintended, but predictable, consequence of the operational response to the biological treatment breakdown was a change in the chemistry of the wastewater being

¹ The pesticides Phorate, Disulfoton, and the heavy metal thallium, were detected in significant concentrations in YVWD sludge samples collected on May 3, 2000. These compounds had never been previously found in YVWD's sludge.

Phorate, an organophosphate insecticide, is by far the most toxic of these three. Reported 96 hour LC50 values in freshwater invertebrates and amphipods range from 0.006 ug/l (micrograms per liter, or parts per billion) to 1.9 ug/l. Phorate must be labeled with the signal words, "DANGER – POISON," and can only be purchased and used by a certified applicator.

Disulfoton is also an organophosphate insecticide. Disulfoton is about 100 times less toxic to tested fish species than phorate. It must be labeled with the signal word, "DANGER."

Thallium sulfate is odorless, tasteless, and very poisonous, and used on grain baits to exterminate rodents and ants. Thallium is also used in components of photomultiplier tubes in some portable gamma radiation detectors and crystals of thallium compounds have been employed in military communication systems. Thallium may be used in low-temperature thermometers, relays, and switches. Thallium salts, which burn with a bright green flame, are used in pyrotechnic devices.

processed. Additional air injected into the activated sludge process (that, at the YVWD plant, follows trickling filter treatment), to counteract the effects of the trickling filter failure, led to increased (but incomplete) nitrification of ammonia, which reduced the wastewater alkalinity. This led to reduced filtration performance and higher effluent turbidity. The reduction of ammonia and creation of unstable nitrogen/oxygen compounds affected the chlorine reactions necessary for effective disinfection. All steps necessary to reestablish treatment, including process design engineering, structural modifications, substituting the flocculating chemicals that aid filtration, modification of the disinfection process chemistry, and acquiring the equipment necessary to implement these steps, were in place and operating on March 29, 2000.

Despite the plant and process changes that were implemented on or before March 29, 2000, coliform violations continued. These violations cannot be reasonably attributed to the alleged intentional act of a third party. Rather, coliform violations after March 29, 2000, are due to testing, fine tuning, and maintenance of the disinfection process to optimize its performance and effectiveness, and experimentation to determine optimum dosage of flocculating chemicals.

In its January 25, 2001, report, YVWD takes the position that the discharge of the toxic substances could not have been prevented, noting that even the most rigorously enforced, restrictive sewer use ordinance cannot prevent someone from intentionally dumping toxic materials into the wastewater system. The YVWD wastewater plant system has never before experienced such an upset, or suspected one could occur. There are many maintenance holes in its sewer system located in remote areas that could provide access to the system by persons intent on discharging wastes illegally. YVWD also notes that through contacts with the local offices of the County Agricultural Commissioner, it learned that there had not been legitimate applications of phorate in the area in several years.

Throughout the January through May 2000, period, YVWD continued to violate the total inorganic nitrogen (TIN) effluent limitation contained in Order No. 96-004. These violations are not related to the coliform and turbidity violations attributed to the intentional act of a third party. In Cease and Desist Order No. 99-47, the Regional Board addressed these TIN violations, and established an interim TIN effluent limitation. However, the mandatory minimum penalty sections of the Water Code did not recognize cease and desist orders as an exemption from penalties until the passage of SB 2165, signed into law following the 2000 legislative term. Therefore, YVWD is liable for mandatory penalties for these TIN violations.

CONCLUSION AND RECOMMENDATION:

YVWD has presented convincing arguments that of the 156 violations cited in Revised Complaint No. 00-61, 115 violations were due to the alleged intentional act of a third party, as summarized above, and are not subject to mandatory penalties. YVWD, in its report, accepts responsibility for the 37 effluent violations between January 1 and May 31, 2000, that are unrelated to the alleged intentional act of a third party.

Staff recommends the Board accept YVWD's defense that 115 of the 156 violations cited in Revised Complaint No. 00-61, attached, were due to an intentional act of a third party, and are therefore not subject to mandatory penalties. Furthermore, staff recommends that the Board affirm Revised Complaint No. 00-61, that shows YVWD is liable for 38 violations of effluent limitations for the period January through May 2000, and that 38 of these require the mandatory minimum penalty of \$3,000 each, for a total penalty of \$114,000.

TIN, and any other, violations that have occurred after May 31, 2000, will be addressed in a subsequent complaint for mandatory minimum penalties.

California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:

Yucaipa Valley Water District)	Revised Complaint No. 00-61
12770 Second Street)	for
Yucaipa, California 92399)	Mandatory Penalties

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Yucaipa Valley Water District is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (Board) must impose mandatory penalties pursuant to California Water Code (Water Code) Section 13385.
2. A hearing concerning this complaint will be held before the Board within 60 days of the date of issuance of this complaint, unless Yucaipa Valley Water District waives its right to a hearing. Waiver procedures are specified on Page 2 of this complaint. If the hearing in this matter is not waived, the hearing will be held during the Board's regular meeting on March 2, 2001 at the City of Corona Council Chambers, 815 West Sixth Street, Corona, CA. The meeting will begin at 9:00 a.m. Yucaipa Valley Water District or its representatives will have an opportunity to appear and be heard and to contest the allegations in this complaint and the imposition of mandatory penalties by the Board. An agenda and announcement for the meeting will be mailed to you not less than 10 days prior to the hearing date.
3. This complaint is based on the following facts:
 - A.) On April 18, 1996, the Regional Water Quality Control Board, Santa Ana Region, (Regional Board) adopted Waste Discharge Requirements Order No. 96-004 (NPDES No. CA0105619), for Yucaipa Valley Water District. These requirements regulate discharges of waste from the District's Henry N. Wochholz Municipal Wastewater Treatment Plant.
 - B.) Yucaipa Valley Water District submitted self-monitoring reports (January through May 2000) which show violations of effluent limits for Total Inorganic Nitrogen, 7-day median and daily maximum Coliform, and Turbidity. These violations are summarized on Attachment "A", which is Page 3 of this complaint.

4. Water Code Section 13385 (i)(2) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger exceeds a waste discharge requirement effluent limitation.
5. The discharger has demonstrated to the satisfaction of Board staff that of the one hundred forty nine (156) violations reported for the January through May 2000, period, one hundred twelve (115) of the violations were due to the intentional act of a third party that could not have been prevented through the exercise of due care or foresight. Therefore, 115 violations are exempt from mandatory minimum penalties, pursuant to Section 13385(j)(3).
6. In accordance with Water Code Section 13385(i), the mandatory minimum penalty for the violations that are not exempt is \$114,000, which is based on thirty four (38) effluent limit violations at \$3,000 each.
7. In accordance with Water Code Section 13385(c), the Regional Board may impose administrative civil liability for one hundred forty nine (156) violations. The maximum administrative civil liability that may be imposed for these violations is \$1,560,000.
8. The Executive Officer proposes that mandatory minimum penalties of \$114,000 be imposed on Yucaipa Valley Water District by the Board for the violations cited above.
9. You may waive your right to a hearing. If you waive your right to a hearing, please sign the attached waiver, which is Page 4 of this complaint, and return it together with a check payable to the State Water Resources Control Board in the amount of the mandatory penalties proposed in Paragraph 8, above. Send the check and waiver to:

California Regional Water Quality Control Board,
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3339

If you have any questions regarding this complaint, please contact the undersigned at (909) 782-3284, Mark G. Adelson, Surveillance and Enforcement Section Chief at (909) 782-3234, or the Board's staff counsel, Ted Cobb, at (916) 341-5171.

Date

Gerard J. Thibeault
Executive Officer

ATTACHMENT "A"

Violations included in reports submitted by Yucaipa Valley Water District commencing January through May 2000.

JANUARY 2000	Coliform 7-day median violations	31
	Coliform daily maximum violations	11
	Turbidity violations	3
	<u>Inorganic Nitrogen Violation</u>	<u>1</u>
	Total Violations for January 2000	46
	Violations due to an intentional act of a third party	45
	January 2000 Violations subject to 13385(i) penalty	1
FEBRUARY 2000	Coliform 7-day median violations	29
	Coliform daily maximum violations	2
	Turbidity violations	3
	<u>Inorganic Nitrogen Violation</u>	<u>1</u>
	Total Violations for February 2000	35
	Violations due to an intentional act of a third party	34
	February 2000 Violations subject to 13385(i) penalty	1
MARCH 2000	Coliform 7-day median violations	31
	Coliform daily maximum violations	4
	<u>Inorganic Nitrogen Violation</u>	<u>1</u>
	Total Violations for March 2000	36
	Violations due to an intentional act of a third party	33
	March 2000 Violations subject to 13385(i) penalty	3
APRIL 2000	Coliform 7-day median violations	28
	Coliform daily maximum violations	1
	<u>Inorganic Nitrogen Violation</u>	<u>1</u>
	Total Violations for April 2000	30
	Violations due to an intentional act of a third party	0
	April 2000 Violations subject to 13385(i) penalty	30
MAY 2000	Coliform 7-day median violations	1
	<u>Inorganic Nitrogen Violation</u>	<u>1</u>
	Total Violations for May 2000	2
	Violations due to an intentional act of a third party	0
	May 2000 Violations subject to 13385(i) penalty	4
JANUARY- MAY 2000 VIOLATIONS SUBJECT TO 13385(i) PENALTY		41

California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF :

Yucaipa Valley Water District)	Revised Complaint No. 00-61
12770 Second Street)	for
Yucaipa, California 92399)	Mandatory Penalties

WAIVER OF HEARING

The Yucaipa Valley Water District agrees to waive its right to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Revised Complaint No. 00-61. Yucaipa Valley Water District has enclosed a check made payable to the State Water Resources Control Board in the amount of \$114,000 in settlement of Revised Complaint No. 00-61. Yucaipa Valley Water District understands that it is giving up its right to be heard and to argue against allegations made by the Executive Officer in Revised Complaint No. 00-61, and against the imposition of, and amount of, the mandatory penalties.

Date

for Yucaipa Valley Water District



California Regional Water Quality Control Board

Santa Ana Region

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288



Gray Davis
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.*

February 20, 2001

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. Joseph B. Zoba, General Manager
Yucaipa Valley Water District
12770 Second Street
Yucaipa, CA 92399

REVISED MANDATORY PENALTIES COMPLAINT NO. 00-61 – YUCAIPA VALLEY WATER DISTRICT, HENRY N. WOCHHOLZ WASTEWATER TREATMENT PLANT

Dear Mr. Zoba:

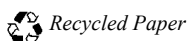
The enclosed Revised Mandatory Penalties Complaint No. 00-61 alleges that Yucaipa Valley Water District (YVWD) is liable for mandatory penalties pursuant to California Water Code Sections 13385 (h) and (i), by discharging wastes that violate effluent limitations established in Waste Discharge Requirements Order No. 96-004 (NPDES No. CA0105619). Complaint No. 00-61 was first issued on July 18, 2000, citing 146 violations of effluent limits for Coliform, Total Inorganic Nitrogen and Turbidity during the period of January 2000 through April 2000. Subsequently, YVWD demonstrated to Board staff that 112 of these violations (coliform and turbidity violations through March 29, 2000) were the result of an intentional act of a third party. Water Code Section 13385 (j) (3) exempts violations due to an intentional act of a third party from mandatory penalties. Revised Complaint No. 00-61 replaces the complaint that was issued on July 18, 2000.

Revised Complaint No. 00-61 cites 156 violations of Order No. 96-004 for the period January through May 2000. YVWD is not liable for mandatory minimum penalties for 115 of these violations, pursuant to Section 13385 (j) (3), or for the first 3 violations, pursuant to Section 13385 (i), but is liable for 38 of these violations in the amount of \$3,000 for each violation. The mandatory minimum penalty for these violations cited is \$114,000.

Yucaipa Valley Water District may waive its right to a public hearing on this matter. If Yucaipa Valley Water District chooses to do so, please sign the enclosed waiver form and submit it to this office prior to March 2, 2001 with a check or money order for the amount of mandatory penalties, \$114,000. The check or money order should be made payable to the State Water Resources Control Board.

If a public hearing is held on this matter, it will be conducted at the Regional Board's March 2, 2001 meeting, at the City of Corona Council Chambers, 815 West Sixth Street,

California Environmental Protection Agency



Corona, CA. If a hearing is held, the staff report concerning the complaint and a meeting agenda will be mailed to you prior to the hearing.

If Yucaipa Valley Water District does not wish to waive its right to a hearing, we recommend scheduling a pre-hearing meeting at the Regional Board's office prior to March 2, 2001. At that time, you may wish to submit information that may not have been previously available to staff regarding these violations. This information should address the factual accuracy of the findings in the complaint.

Should you have any questions, or if you would like to schedule a pre-hearing meeting, please contact me at (909) 782-3284, Mark Adelson, chief of the Board's Surveillance and Enforcement Section, at (909) 782-3234, or Ted Cobb, the Regional Board's staff counsel, at (916) 341-5171.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosure: Revised Complaint No. 00-61

cc: w/enclosures
Regional Board
State Water Resources Control Board, Office of the Chief Counsel -- Ted Cobb
Aklufi & Wysocki

MGA/x/revised MPC 00-61 transmittal.doc